

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 682 of 1985

with

SCA No.683 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?

No

MUNICIPAL CORPORATION OF CITY OF AHMEDABAD

Versus

SHAMLAL N BHAVSAR

&

A.M.C. vs. H.J.Parmar

Appearance:

MR BP TANNA for Petitioner

SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 11/07/96

ORAL JUDGEMENT

Present petitions are filed by the Ahmedabad Municipal Corporation under article 227 of the Constitution of India against the award of the Arbitrator in complaint (ARB) No.7/84 on 21.11.1984.

2. SCA No. 683 of 1985 is also preferred by the Ahmedabad Municipal Corporation of the City of Ahmedabad under article 227 of the Constitution of India to challenge the said award given on 21.11.84 in Arbitration Complaint No. 5/84. Arbitration Complaint no. 7/84 and 5/84 were decided by the common award passed on 21.11.84. Therefore, both these writ petitions are also being disposed of by this common order.

3. The Ahmedabad Municipal Corporation of Ahmedabad is having number of posts in various grades and pay scales. In the octroi department of the petitioner corporation there are several posts of Valuation Officers in the pay scale of Rs. 650-1040. In the year 1984 for the purpose of hearing and disposing of the objections against the assessment of Gross Rateable Value, the petitioner corporation created temporary posts of Appellate Officer on the administrative side in the pay scale of Rs.700-1300. Initially said posts were created for a period of two months but later on the period was extended on two occasions and the total period of these temporary posts was of only six months. On these newly created temporary posts, the petitioner corporation had posted the Valuation Officers in the pay scale of Rs. 650-1040 by way of giving them temporary appointments. On the ten posts which were lying vacant, ten officers who were working as Appellate Officers in the pay scale of Rs. 650-1040 were appointed and ten posts of valuation officers in the pay scale of Rs. 650-1040 were kept vacant and in order to get the work of valuation officer, they created temporary posts of Jr. Valuation Officers for the said period of 6 months in the pay scale of Rs. 425-700. In these ten posts of Jr. Valuation Officers created temporarily, the persons working in the common cadre in the other departments of the corporation were posted.

4. The respondents in both the petitions are the office bearers of the union and the respondent in SCA No.683/85 Harishbhai Jhaverbhai Parmar made complaints under section 33A of the I.D Act before the competent authority. It was the complaint of the respondent that as per the usual practice of the corporation in such case of creating temporary of the Appellate Authority was to promote the persons working as Valuation Officers and then to promote persons in the pay scale of Rs.650-1040.

There was no pay scale and post in the pay scale of Rs. 425-700 and by creating said post and posting person (Jr. Valuation Officers) the corporation had denied benefit of promotion as per seniority to the post carrying pay scale of Rs. 650-1040. Said complaints were entertained by the Arbitrator and after hearing both the sides he has issued the following directions:

- "(i) On the 10 posts of valuation officers in the pay scale of Rs. 650-1-40, employees should be appointed by promotion on the principle of seniority cum merit.
- (ii) Those who have been placed on the newly created posts (scale of 425-700) should be treated as having been appointed as valuation officers (scale of Rs. 650-1040) only if they are eligible for appointment thereon as per the principle mentioned in (i) above. Otherwise they should be reverted to their original posts from where they have placed as Junior Valuation Officers.
- (iii) Other employees who are eligible to be promoted as Valuation officers in the pay scale of Rs. 650-1040 on the said principle should be so promoted vice those who are to be reverted as per (ii) above. However, the employees so promoted should be treated to have been promoted with effect from 1.7.1984 and paid accordingly."

5. Present writ petitions are filed to challenge the said directions and particularly of clause 2. These matters came up for hearing today and nobody has appeared on behalf of the respondents. I have heard the learned advocate for the petitioners at length.

6. It is admitted that that as could be seen from the counter affidavit that in order to dispose of the objections against the Gross Rateable Value, the corporation had created temporary posts of Appellate Officer in the pay scale of Rs. 700-1300 and in the said temporary created posts i.e. Valuation Officers who were drawing the pay scale of Rs. 650-1040 were promoted. It is also an admitted fact that when those 10 persons drawing pay in the pay scale of Rs. 650-1040 were promoted, ten posts in the pay scale of Rs. 650-1040 of the Valuation Officers were not filled in. There is no dispute of the fact that the posts of Valuation Officers are usually filled in by seniority from the lower grade of Rs. 475-700 and the act of the respondent in creating

the temporary posts of Jr. Valuation Officers in the pay scale of Rs. 425-700 has resulted into the denial of temporary promotion and financial benefits to the persons working in the pay scale of Rs. 425-700. Persons working in the pay scale of Rs. 425-700 were eligible and entitled to get promotion of Valuation Officers in the pay scale of Rs.650-1040 by seniority. Said opportunity of getting promotion to the said post of Valuation Officer and the consequential financial benefit is denied by the act of the petitioner corporation in not filling the said post of Valuation Officer in the pay scale of Rs.650-1040 by giving promotion to the persons drawing the pay in the pay scale of Rs. 425-700. Consequently, the finding recorded by the Arbitrator in this in respect of denial of temporary promotion to ten persons by the act of the corporation in not filling those posts and creating temporary posts of Jr. Valuation Officers is correct and proper. Therefore, the direction no1 given by the Arbitrator in his final order is correct. However, said direction needs modification as the same is not clear and is not giving proper relief which was sought by the petitioners before me. Direction no.2 given by the Arbitrator is as under:

"Those employees who have been placed on the newlycreated posts (scale of 425-700) should be treated as having been appointed valuation officers(scale of Rs.650-1040) only if they are eligible for appointment thereon as per the principle mentioned in (i) above. Otherwise they should be reverted to their original posts from where they have placed as Junior Valuation Officers."

When the Arbitrator had found that ten posts of Valuation Officers in the pay scale of Rs. 650-1040 was to be filled in by way of appointment by promotion on the principle of seniority cum merit, his direction that the employees who had been placed in the pay scale of Rs. 425-700 of Jr. Valuation Officers should be treated as having been appointed as Valuation Officers in the pay scale of Rs.650-1040, is not proper and correct. Admittedly persons who were posted and appointed as Jr. Valuation Officers were drawing pay scale the pay scale of Rs. 425-700 and they were posted as Jr. Valuation Officers in these newly created scale of Rs. 425-700. Those persons have accepted the said posting of the posts of specific scale and they have worked in that scale and they have been paid . The only thing is that as it is found that the act of the corporation in not filling the ten posts of Valuation Officers in the scale of

Rs.650-1040 by giving temporary promotion on the principle of seniority cum merit, the persons who were eligible to the said promotion were denied the benefit and they were entitled to get the benefit of promotion. But to allow persons who have worked in the newly created posts to be treated as appointed as Valuation Officers in the pay scale of Rs. 650-1040 will not give the relief to the person who were entitled to the temporary promotion in that scale. Thus the second direction of the arbitrator is inconsistent and is contrary to the first direction and said direction is not also in pursuance to the claim made by the petitioners.

7. Therefore, in the above circumstances I hold that the order of the Arbitrator will have to be modified by allowing the petitions partly. I therefore, order that the initial directions of the Arbitrator in his order dated 21.11.84 are hereby deleted and in their place the following directions are to take place.

"(1) That creation of ten posts of Assessment Officers in the pay scale of Rs. 700-1300 and promotion Valuation Officers in the pay scale of Rs. 650-1040 as (Appellate Officers), the ten posts of Valuation Officers in the pay scale of Rs. 650-1040 must be deemed to have been filled in by promotion 10 persons temporarily for the period till the post of Assessment Officers were in existence by promoting, next persons on the principle of seniority cum merits and those ten persons deemed to have been promoted for the said period are entitled to claim and get benefit of the said temporary promotion.

On account of promotion of ten persons in the pay scale of Rs.650-1040 on the principle of seniority cum merit, the persons who were employed as Jr.Valuation Officers in the pay scale of Rs. 425-700 would not be deprived of the pay drawn by them in that pay scale only because of the filling in of the post of Valuation Officers in the pay scale of Rs. 650-1040

On account of the promotion of ten in the pay scale of Rs. 650-1040, if there happens to be vacancies in their original post and if those posts are in the regular course were also to be filled in by promotion from the next cadre, then those consequential promotions should be also

given effect to for the said said temporary period."

Above promotions are to be given from 1.7.94 till the date of ceasing of the temporary posts of Appellate Officers in the pay scale of Rs. 700-1300. The promotions as directed to be given along with the pay scale for the said temporary period to those who are eligible to the said promotions. Petitions are disposed of with no order as to costs. Rule made absolute in both the petitions to the above extent.

(S.D.Pandit.J)